

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA

FILED
MAR 03 2016

Clerk

IN THE MATTER OF THE APPLICATION
OF THE UNITED STATES OF AMERICA
FOR AN ORDER, PURSUANT TO 18
U.S.C. § 2705(b), PROHIBITING
FACEBOOK, INC., AN ELECTRONIC
COMMUNICATIONS PROVIDER, FROM
NOTIFYING ANY PERSON, INCLUDING
THE SUBSCRIBER, OF THE EXISTENCE
OF A SUBPOENA.

16 -MC- 13

SEALED APPLICATION

The United States, through Assistant United States Attorney Jennifer M. Mammenga, for the District of South Dakota, hereby applies to the Court pursuant to 18 U.S.C. § 2705(b) for an order prohibiting Facebook, Inc., located at 1601 Willow Road, Menlo Park, CA 94025, which functions as an electronic communications service provider, from notifying any person, including the subscriber, of the existence of a subpoena to Facebook, Inc., that requests subscriber information related to the Facebook, Inc., accounts:

<http://www.facebook.com/michael.desy>

In support of this application, I affirm the following:

FACTUAL AND LEGAL BACKGROUND

1. The Department of Health and Human Service, Office of Inspector General ("HHS/OIG") is currently investigating failure to pay legal child support, in violation of 18 U.S.C. § 228(a)(3).
2. Based on the investigation of this criminal activity, there are reasonable grounds to believe that Facebook, Inc., has records and other

information that are relevant and material to the ongoing criminal investigation described above.

3. Section 2703 of Title 18, United States Code, provides instruction on access to the records and other information in the possession of providers of "electronic communications services" and/or "remote computing services." Facebook, Inc., functions both as an electronic communications service provider -- that is, Facebook, Inc., provides its subscribers with access to electronic communication services, and as a remote computing service provider providing computer facilities for the storage and processing of electronic communications as those terms are used in 18 U.S.C. § 2703.

4. Here, pursuant to 18 U.S.C. § 2703(c)(2), the government seeks to obtain the following basic subscriber information:

- (1) The full name of the subscriber associated with the account;
- (2) Physical location of subscriber;
- (3) Mailing address of subscriber;
- (4) E-mail address of subscriber;
- (5) Dates of activation and discontinued service;
- (6) Credit card information;
- (7) Please include any/all information regarding IP information to include IP address; and,
- (8) Telephone/Cellular number(s) of subscriber

5. According to 18 U.S.C. § 2703(c)(2), a Federal grand jury subpoena may be used to obtain the above-described subscriber information.

6. According to 18 U.S.C. § 2703(c)(3), a governmental agency receiving records or information under 18 U.S.C. § 2703(c)(2) is not required to provide notice to a subscriber or customer.

7. Pursuant to 18 U.S.C. § 2705(b), the Court may issue an order commanding a provider of electronic communications services or remote computing services that has been served with a subpoena in accordance with 18 U.S.C. § 2703, to not notify the subscriber, customer or any other person of the existence of the subpoena or court order.

8. Also pursuant to 18 U.S.C. § 2705(b), the Court shall enter such an order if it determines that there is reason to believe that notification of the existence of the subpoena will result in (1) endangering the life or physical safety of an individual; (2) flight from prosecution; (3) destruction of or tampering with evidence; (4) intimidation of potential witnesses; or (5) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

9. Accordingly, this application sets forth the facts showing that there are reasonable grounds to believe that the records and information sought are relevant and material to the ongoing criminal investigation described above and that an order prohibiting the disclosure of the subpoena and request for information is warranted under the circumstances.

THE RELEVANT FACTS

10. Department of Health and Human Service, Office of Inspector General ("HHS/OIG") is conducting an investigation of a suspect for failure to pay legal child support. The investigation has revealed that a Facebook account <http://www.facebook.com/michael.desy> is associated with the subject of the investigation. Information within the accounts identified above could potentially be used to pursue additional information concerning the crimes and the potential defendant currently being investigated by the federal government.

11. The Facebook account above was identified through an investigation conducted by the HHS/OIG agent.

12. For the purposes of the ongoing investigation, the Government seeks to obtain basic subscriber information of the requested accounts possibly associated with the suspect.

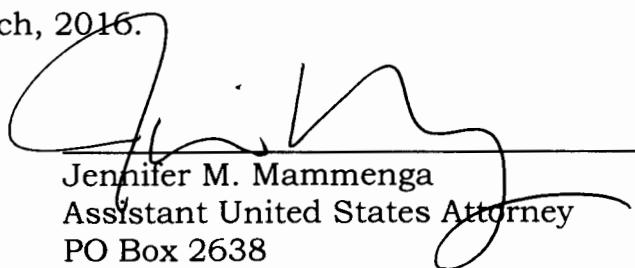
13. It is requested that this Application and Order be sealed by the Court for 180 days, or as the Court directs otherwise. Given the confidential nature of this investigation, disclosure would severely jeopardize the investigation in that it might alert the target of the investigation to the existence of an investigation and likely lead to the destruction and concealment of evidence, and/or flight.

14. It is further requested that pursuant to the preclusion of notice provisions of 18 U.S.C. § 2705(b), that Facebook, Inc., be ordered not to notify any person (including the subscribers or customers to which the materials

relate) of the existence of this order or the Federal subpoena until further order of the Court. The Government submits that such an order is justified because notification of the existence of this order could seriously jeopardize the ongoing investigation. Such a disclosure could give the subscribers an opportunity to destroy evidence, notify confederates, or cause people to flee or continue to flee from prosecution.

WHEREFORE, it is respectfully requested that the Court grant the attached Order (1) directing that the Application and Order be sealed; and (2) directing Facebook, Inc., not to disclose the existence or content of the Order, the application, or the Federal subpoena, except to the extent necessary to comply with the Federal subpoena.

Dated this 2nd day of March, 2016.



Jennifer M. Mammenga
Assistant United States Attorney
PO Box 2638
Sioux Falls, SD 57104
605-357-2352